



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

Case No. 440-2012-05205

██████████,
Complainant,

v.

ARCELOR-MITTAL,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission (“Commission”) pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(b).

On August 27, 2012, ██████████ (“Complainant”) filed a Complaint with the Commission against Arcelor-Mittal (“Respondent”) alleging discrimination on the basis of disability and race (African-American) in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et. seq.*) and ██████████

Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint.

The issue presented before the Commission is whether Complainant was denied a reasonable accommodation and ultimately terminated because of her race and disability. In order to prevail, Complainant must show that 1) she suffered from a condition that substantially limits a major life activity; 2) she suffered an adverse employment action; 3) she was meeting Respondent’s legitimate business expectations; and 4) Respondent treated similarly-situated non-disabled employees of another race more favorably than Complainant.

It is clear that Complainant’s service connected Post Traumatic Stress Disorder (PTSD) constitutes a disability for purposes of the applicable statutes. Moreover, there is no question that Complainant suffered an adverse employment action when Respondent responded in the affirmative to Adecco’s inquiry to whether it needed another employee to perform Complainant’s responsibilities which ultimately lead to Complainant’s termination on August 8, 2012, the next day. Thus, the remaining issues are whether Complainant was meeting Respondent’s legitimate business expectations and whether Respondent treated similarly-situated non-disabled employees of another race more favorably than Complainant.



By way of background, Complainant was recruited, interviewed, selected, and hired by Adecco. In August of 2011, Adecco placed Complainant on a job assignment with Respondent as an order entry analyst. The available evidence shows that Respondent furnished Complainant with equipment and tools necessary to perform her job duties as well as set the hours and duration of her assignment. Complainant also worked on Respondent's premises and performed duties that were part of the course of Respondent's regular business. While assigned to Respondent, Complainant's direct supervisor was the shift supervisor, [REDACTED]. As a result of Complainant's PTSD, she needed to adjust her work hours in order to attend appointments twice a month at the local veteran's hospital; as such, she would verbally ask Lowell to adjust her work hours to attend these appointments. Complainant would follow up the verbal request by sending emails to Lowell, memorializing the verbal conversation. While the Manager of Order Management, [REDACTED] denies being aware that Complainant requested an accommodation, namely, time off to attend appointments, both [REDACTED] and [REDACTED] acknowledge their awareness of Complainant's PTSD and need to attend appointments to treat the condition. Similarly, [REDACTED] admitted that Complainant requested an accommodation to take time off to attend appointments at the veteran's hospital.

The available evidence further indicates that Complainant's symptoms worsened from February 2012 through July 2012 as a result of an on-going conflict with a co-worker, [REDACTED]. During this time, Complainant alleges to have had several conversations with Dorman advising that she was having a difficult time dealing with conflicts because of her condition and requesting ideas to resolve the issue. Nevertheless, soon thereafter, on July 31, 2012, Complainant left work for a scheduled PTSD treatment and informed her physician that the conflict with [REDACTED], along with other issues, was causing her to feel suicidal. Complainant was immediately hospitalized and remained in their care from July 31, 2012 through August 9, 2012. The evidence clearly shows that the hospital and her physician refused to allow Complainant to communicate to others during this time; therefore, she relied upon her family to inform the necessary parties of her condition. Although Complainant was scheduled to work on August 1 through August 3 as well as August 8 through August 9, several members of her family informed Respondent and Adecco of Complainant's hospitalization. The evidence clearly shows that Complainant's fiancé spoke with Dorman by phone on August 1, 2012, advising that Complainant was hospitalized and prohibited from communicating with others. He also stated that he did not know when she would be released from the hospital. Two days later, on August 3, 2012, [REDACTED], Adecco's Staffing Representative, called Complainant's mother seeking information regarding Complainant's status. Evidence shows that Complainant's mother informed Mahmet that Complainant was hospitalized, prohibited from communicating with others, and that she too was unsure of the date in which Complainant would be released from the hospital.

Despite these communications with Complainant's family, on or about August 7, 2012, [REDACTED] sent a letter to Complainant's home indicating that Adecco was informed from [REDACTED] that Complainant had been hospitalized since August 1, 2012 and that [REDACTED] herself spoke with

Complainant's mother about Complainant's condition. [REDACTED] indicated that she tried leaving a voicemail on Complainant's phone, but she was unable to do so since Complainant's voicemail box was full. [REDACTED] also noted that she needed to know whether Complainant would be able to work August 8 and August 9 as she was scheduled to work on those days and Respondent would need coverage. The next day, on August 8, 2012, [REDACTED] emailed Complainant stating that her assignment had ended with Respondent as she had not been to work in a week. Adecco claims that Respondent requested Adecco to assign someone else to perform Complainant's job duties; ironically, Respondent contends that Adecco asked whether they needed someone to perform Complainant's duties and they merely responded in the affirmative.

The record clearly shows that agents for Respondent were aware of Complainant's medical condition as well as her need for an accommodation. The record is also clear that Respondent and Adecco were notified that Complainant was in the hospital during the days immediately preceding her termination and was prohibited from speaking with anyone. While Respondent contends that Complainant failed to meet its legitimate business expectations for her position because of her week-long absence, or as Respondent indicates in their response, "sporadic" attendance, Respondent has not submitted any evidence showing that it was dissatisfied with Complainant's work performance prior to her hospitalization.

Complainant has also identified two non-disabled comparators of another race who received more favorable treatment under similar circumstances. Both women [REDACTED] and [REDACTED], were hired by Adecco and assigned to work as order entry analysts for Respondent. While the evidence shows that both women took leaves of absence exceeding five consecutive days, Respondent did not terminate their assignment. Thus, the evidence shows that Respondent failed to engage in an interactive communication process with Complainant to assess and determine a reasonable accommodation for Complainant. Further, while it is unclear which of the parties, Respondent or Adecco, initiated the termination process or formally terminated Complainant, Respondent's actively agreed that it wanted someone to assume Complainant's duties. Respondent's actions were merely pretext for discrimination on the basis of race and disability and as such, probable cause exists to believe that an unlawful discriminatory practice may have occurred in this instance.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-0.

June 17, 2013

Date

Akia A. Haynes

Akia A. Haynes, Esq.,

Deputy Director

Indiana Civil Rights Commission